

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

BARBARA LEWIS, AKEMI BUCKINGHAM,  
BOBBIE JOE HULING, CYNTHIA  
WHETSELL, MARTHA MERLE, ELAINA  
HUFNAGEL, TERESA GATTUSO, ELISSA  
WAGNER, and DIXIE WILLIAMS, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

RODAN & FIELDS, LLC, a California limited  
liability,

Defendant.

Case No. 3:18-cv-02505 PJH  
(Consol. with No. 4:18-cv-02505-PJH)

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS PLAINTIFFS'  
CONSOLIDATED COMPLAINT**

Assigned To: Judge Phyllis J. Hamilton

Hearing Date: February 20, 2019

Hearing Time: 9:00 a.m.

Courtroom: 3 – 3rd Floor

Action Filed: April 13, 2018

Case No.: 4:18-cv-02248- PJH

**[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION TO DISMISS  
PLAINTIFFS' CONSOLIDATED COMPLAINT**

Doc. # DC-12589166 v.1

1 On February 20, 2019, Defendant Rodan & Fields, LLC brought on for hearing its Motion  
 2 to Dismiss Plaintiffs' Consolidated Complaint (the "Motion"). Appearances were made as is  
 3 reflected on the record. The Court has considered the argument presented by all parties at the  
 4 hearing, and all papers submitted in support of and in opposition to the Motion, and hereby  
 5 GRANTS Defendant's Motion in its entirety.

6 Plaintiffs do not allege any concrete injury caused by their purchase of Lash Boost, and  
 7 thus lack Article III standing and statutory standing.

8 Additionally, Plaintiffs fraud-based claims (*see* Motion at p. 12, fn. 5) fail to satisfy Rule  
 9 9(b)'s heightened pleading standards, because Plaintiffs do not allege the circumstances of their  
 10 purchases, including any facts to support her claim that R+F deceives consumers through its  
 11 advertising of Lash Boost. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009)  
 12 (affirming district court's dismissal where plaintiff identified television advertisements and sales  
 13 materials for cars, but failed to "specify when he was exposed to them or which ones he found  
 14 material."); *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1549-53 (9th Cir. 1994), *superseded by*  
 15 *statute on other grounds as stated in SEC v. Todd*, 642 F.3d 1207, 1216 (9th Cir. 2011) (to satisfy  
 16 Rule 9(b), Plaintiff must "demonstrate the falseness of the charged statements.").

17 Plaintiffs' Counts under the consumer protection statutes of California, Florida, Illinois,  
 18 Massachusetts, New York, and Washington are defeated by their failure to allege a deceptive act,  
 19 reliance, causation, or resulting damage. Plaintiffs' Counts under the Unfair Competition Law  
 20 and False Advertising Law also fail because Plaintiffs do not allege that they lack an adequate  
 21 remedy at law. *See Gomez v. Jelly Belly Candy Co.*, No. EDCV 17-00575-CJC(FFM), 2017 WL  
 22 8941167 \*1-2 (C.D. Cal. Aug. 18, 2017) (citing *Philips v. Ford Motor Co.*, No. 14-CV-02989-  
 23 LHK, 2015 WL 4111448\*16 (N.D. Cal. July 7, 2015)).

24 Plaintiffs' claims for common law fraud (fraudulent concealment, fraudulent  
 25 misrepresentation, and/or negligent misrepresentation) fail because they do not allege facts to  
 26 support justifiable reliance, falsity, that R+F was aware of the alleged side effects or intended to  
 27 induce reliance or to deceive, or damages. *See, e.g. Doe v. Dilling*, 888 N.E.2d 24, 29 (Ill. 2008);  
 28 Restatement (Second) of Torts § 552(1).

1 Plaintiffs' claims for negligent misrepresentation under California, Florida, and  
 2 Washington law fail because those states' laws do not permit such claims to be based on  
 3 omissions. *See Regents v. Principal Fin.*, 412 F. Supp. 2d 1037, 1045 (N.D. Cal. 2006); *Ross v.*  
 4 *Kirner*, 172 P.3d 701, 704 (Wash. 2007); *Kahama VI, LLC v. HJH, LLC*, No. 11-cv-2029, 2013  
 5 WL 6511731 \*6 (M.D. Fla. Dec. 12, 2013). Plaintiffs' claims for negligent misrepresentation  
 6 under Illinois and Washington law are barred by the economic loss rule. *Alejandre v. Bull*, 159  
 7 Wash. 2d 674, 680 (2007) (dismissing negligent misrepresentation claim based on alleged  
 8 misrepresentations about septic system); *First Midwest Bank v. Stewart Title Guar*, 843 N.E.2d  
 9 327, 334 (Ill. 2006).

10 Plaintiffs' claims under the Racketeer Influence and Corrupt Organization Act ("RICO")  
 11 fail because Plaintiffs do not allege facts to support statutory standing, the existence of a  
 12 fraudulent scheme, or a criminal enterprise. *Eclectic Properties East, LLC v. Marcus & Millichap*  
 13 *Co.*, 751 F.3d 990, 997 (9th Cir. 2014).

14 For these reasons, the Court GRANTS Defendant's Motion in its entirety.

15 **IT IS SO ORDERED.**

16 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
 Hon. Phyllis J. Hamilton  
 United States District Court,  
 Northern District of California